No. 15 & 16.

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Supreme Court of the United States.

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Filed Oct. 15, 1900.

THE UNITED STATES, PETITIONER,
vs.
E. A. MORRISON & SON,
and
SAME PETITIONER
vs.
H. WOLFF & CO.

No. 15,

No. 16.

On Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

Additional Brief for Respondents in Compliance with the Court's Suggestion of May 28, 1900.

ALBERT COMSTOCK,
Of Counsel.

COMSTOCK & BROWN,
Attorneys for Respondents.

O. G. Bunnell, Walker and Centre Street, N. Y.

Supreme Court of the United States.

THE UNITED STATES, Petitioner, vs E. A. MORRISON & SON.	No 15
AND SAME PETITIONER vs H. WOLFF & CO.	No 16

Additional Brief for Respondents, in Compliance with the Court's Suggestion of May 28, 1900.

The court invites from counsel a further discussion of three points involved in these cases, which points are accordingly supposed to represent the only aspects of the matter on which the mind of the court is not made up. To the three questions propounded, counsel for the respondents answers as follows:

1 *The precise scope and effect, in this court, of the stipulation of March 18, 1897.*

This stipulation, found on p. 35 of the Morrison record (top), was made after the decision of the circuit court, and with the double purpose of shortening the appeal record

(to reduce cost of printing etc) and simplifying argument in the appellate court. The importer's claims had been allowed in part—on the loose or unstrung "masses of mat jewel stones"—by the general appraisers (record, p. 3, foot), and in further part—on the black "nailhead" beads, also loose, which were Exhibit 1—by the circuit court (77 Fed. Rep. 605), and as appeal from these decisions was in each case by the importers only, much matter of protest and evidence had thus become irrelevant to the issue remaining in dispute in the appellate court. The stipulation pruned away all such redundant matter, and then proceeded to delimit the ground for argument by asserting those conclusions on which counsel found their views in unison. It was not at all intended, nor could it, as is submitted, properly result, that the judicial view should be diverted, nor the judicial decision hampered, of any issue involved in the case as made by the proofs themselves. But that the merchandise was beads (a fact which could only militate against the importers if of any weight) was unanimously testified to by every witness, and thus seemed unchallengable and proper for stipulation. That these beads were imported strung on threads or strings for convenience of handling, was equally a proven fact, as well of the catseyes (Exhibit 2) and pearls (Exhibit 4), as of the masses of mat jewel stones *now found* loose as Exhibit 3, and which must not be confounded with those goods identically described, but *imported* loose, and therefore decided in the importers' favor on the protest, so that they were never involved in the court proceedings. Counsel may of course have been in common the victims of error in assuming, and therefore in stipulating, that this fact excluded the beads from a classification under Par. 445 on account of its words "loose, unthreaded or unstrung", and if this court should so conclude, it is thought that no stipulation of counsel, and no consequent order of the circuit judge, could estop the court from correcting such error by its

ruling. It must be observed that claim under Par. 445 is expressly made in the protest of the importers (record, p. 2, f. 4), and the application of this paragraph is therefore as much in issue as that of Par. 454 or Par. 108. It is further notable that a decision bringing glass beads on strings within the scope of Par. 445 would be precisely as acceptable to these and all like claimants, as that contended for, the rate of 10 *per cent. ad valorem* being common to both paragraphs.

What has been said as to stipulating these importations out from Par. 445 may be applied equally to the further part of the stipulation, in effect that the goods were dutiable either under Par. 454 or as assessed by the collector, under Par. 108 as unenumerated manufactures of glass. The ingenuity of counsel for the respondents had not sufficed to suggest any other part of the tariff law of 1890 which could reasonably apply to these glass beads, except the three already enumerated, and as he was convinced that Par. 445 excluded them as being strung, he willingly conceded that Par. 454 was alone available to prevent the assessment of the high rate of duty carried by Par. 108. Yet if this court does not agree in this conclusion, it is not thought that anything in the record can stop it from ruling according to its view. It is to be remembered that these two cases are merely representative, involving little in themselves, but having their importance in securing so clear and conclusive a judicial announcement as shall settle like issues involved in numerous other and waiting cases and protests.

2. *When, if at all, the purpose for which beads were threaded or strung might be held not to prevent their classification under Par. 445, act of 1890.*

This query involves discussion as to whether, in fact, counsel below were in common error in the chief matter of the stipulation above referred to.

We answer: Never. And in this view our opponent, on page 11 of his supplemental brief, clearly concurs. The argument to the contrary seems to us to be confined to the sole point that it is unreasonable, or inconsistent, for a low rate of duty to be laid on the commodity, glass beads, when imported loose in boxes or parcels, and a far higher rate when imported in the strictly interchangeable form of strings or bunches.

That some unreasonableness exists here, may be frankly conceded; but just such unreasonableness occurs beyond judicial cure, throughout every recent tariff law, from beginning to end. Thus in this same provision, 445, how completely unreasonable is the limitation of bead components to glass! There is a large importation of metal beads, which belong, by trade *status* and uses, to the same group as glass ones, and like those, are often imported unstrung. Yet by reason of this arbitrary limitation of Par. 445 to glass beads, these unstrung metal beads must find their classification elsewhere. And in Par. 454 the limit of "one inch in dimensions" is perfectly arbitrary. The records of treasury rulings show that imitations of precious stones are imported, some just under and others just over this limit of size, and precisely alike in all other respects. Yet the latter must pay a duty of 60 *per cent. ad valorem*, as unenumerated articles of glass, under Par. 108, while the smaller ones pay but 10 *per centum* under Par. 454. Surely it might reasonably be asked: was it the intention of Congress that such imitation stones as were $\frac{1}{100}$ short of an inch in dimensions should pay but 10 *per centum* and that those $\frac{1}{100}$ over an inch should pay six times as great a duty? Yet counsel would indeed have temerity, who should ask a court to construe or ignore so plain a provision of the law.

Going no further afield than the act and the schedule under consideration, examples of unreasonableness may be noted in the provision for "cork bark, cut into squares or cubes," at a certain duty, while all

other manufactures of cork pay a different rate. It had surely been more reasonable to provide for the bark cut into squares, cubes *or other shapes*, but Congress has not done so, and as a result, squares and cubes must pay one rate, while oblongs and triangles pay another. No plea of reasonableness can be made for this, but the language and its meaning are far too plain for construction.

In the same schedule, doll-heads of china, or of rubber, are to pay 35 *per centum*, while doll-bodies of the same substances are clearly excluded from that classification. Masks of paper or pulp may be entered at 35 *per centum*, while masks of cotton, such as are also largely used, must find their duty rate as unenumerated manufactures of cotton at 40 per centum in schedule I.

But nothing is more completely settled than that courts cannot assume the cure of these inconsistencies. The first general maxim of Vattel as to interpretation of laws is: It is not allowable to interpret what has no need of interpretation. And the decisions of this court, for a hundred years past, teem with applications of this rule, of which we herewith cite a few of those most applicable to such cases as the present.

> "*The intention of the legislature is to be collected from the words they employ. Where there is no ambiguity in the words, there is no room for construction.*"

MARSHALL, C. J., in U. S. vs. Wiltberger, 5 Wheat., 76 (95-96)

> "*What the legislative intention was, can be derived only from the words they have used; and we cannot speculate beyond the reasonable import of these words. The spirit of the act must be extracted from the words of the act, and not from conjectures aliunde.*"

STORY, J., in Gardner vs. Collins, 2 Pet. 58 (93)

The customs laws seem peculiarly within this doctrine, being neither moral nor corrective in nature, but providing an arbitrary system or series of taxes merely. In

Aldridge vs. Williams, 3 Howard, 9 the Court said :

> " *The law as it passed is the will of the majority of both houses, and the only mode in which that will is spoken is in the act itself ; and we must gather their intention from the language there used.*"

> " *The legislative intent is to be sought first from the words they have used. If these are clear we need go no further.*" " *Better to submit to a temporary inconvenience than to set the laws all afloat by laying down a canon of construction which leaves the plain words and seeks to spell out or guess at the supposed intent of the Legislature, contrary or supplementary to that which is clearly embodied in the words it has used.*"

BRADLEY, J., in Merrit vs. Welsh, 14 Otto 694.

> " *The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language he has used. He is presumed to know the meanings of words and the rules of grammar.*"

BREWER, J., in U. S. vs. Goldenberg, 168 U. S. 95.

Other cases to the same effect include :

Marine vs. Packham, 52 Fed. Rep. 579.
Rice vs. U. S., 53 Fed. Rep. 910.
re Downing, 56 Fed. Rep. 700.
Magone vs. VomCleff, 70 Fed. Rep. 980.
U. S. vs. Giese, 83 Fed. Rep. 692.
Coles vs. Collector, 100 Fed. Rep. 442.

Upon the precise point raised by the question, the

circuit court and circuit court of appeals at New York had passed, prior to the making of the stipulation herein. In

re Steiner, 66 Fed. Rep. 726
(Affirmed without opinion, 79 Fed. Rep. 1003).

beads strung on threads for convenience of handling and conveyance, precisely like those here *in that respect*, were claimed to be entitled to the benefit of Par. 445, on the theory that unless strung in the course of putting them to, or preparing them for, final use, they were as though unstrung. But the courts overruled this contention, and their decision has ever since been accepted as conclusive. And it is noteworthy that to neither of the courts below, in passing on the cases at bar, does any doubt on this point seem to have occurred.

In view of suggestions in the Government's supplemental brief, it is important to correct any misapprehension as to the character of the stringing of the beads in controversy. On pages 10 and 15 of said brief it is indicated as the view of counsel for the Government that these beads were not merely on strings for temporary convenience and assortment, but were so strung as to be necklaces, trimmings, etc. He takes this as conceded and as manifest. But it is not conceded, not manifest, and not fact, and no court in these cases has so found. The concession quoted on his page 10 meant only what it said, and not, as counsel seems to think, something further, as to the purpose of stringing the beads. As to the manifest fact, it is easily observable, since Exhibits 2 and 4 remain strung precisely as imported. Exhibit 3, now loose in a small parcel, was imported strung precisely as 2 and 4 now are, and a glance would suffice to show that none of these articles are strung *into* anything, nor for any purpose, save merely to be conveniently dealt with as beads or as stones. Nor can the words of the opinion in the appellate court be so read as to mean more. When that court stated as "a natural sugges-

tion" that "the Morrison importations were to be exclusively used for trimming ladies' hats or apparel," it of course did not refer to the strings of beads or stones, but to the separate beads or stones composing the strings.

To summarize, then; if any strung beads could be entitled to entry under Par 445, these would be they. But we not only admit but submit, that the plain and unambiguous language of that paragraph, perfectly practical of application, and productive of no absurdity, allows no scope or excuse for interpretation, and therefore excludes in effect, as it does in words, every bead not literally loose and unstrung.

3. *Whether it was the intent of Congress to impose a duty of 10 per cent under Par. 454, on such beads as imitated precious stones, were within one inch in dimensions, and were strung, while imposing a duty of 60 per cent on other strung glass beads.*

We answer: It was, unless all the decisions quoted and cited above are to be overridden. We have so fully discussed the court's second query, while arriving at a result adverse to our clients' interests, because we conceive the doctrine which compels that result, is conclusive for the affirmative here. Our opponent, who seems to concur with us as to both reason and conclusion on query 2, is forced on query 3 to turn his back on sound doctrine, and to contend that the plain letter of the law should be abandoned in favor of "conjectures *aliunde*." There is surely no word nor sentence in Par. 454, not plainly expressive of a clear idea. There is no obscurity, no dubiety, no repugnance between part and part. Mr. Justice BREWER, writing the opinion in U. S. vs. Goldenberg *(supra)*, declined an invitation to construe un-literally a far more equivocal tariff provision than the present, saying: "In the case at bar, the omission to make provision for the time of payment does not offend the moral sense; it involves

no injustice, oppression or absurdity. * * * Certainly there is nothing which imperatively requires the court to supply an omission in the statute, or to hold that Congress must have intended to do that which it has failed to do."

We cannot conceive that anything in or connected with Par. 454 supports the contention for interpretation. Its scope is as precise as that of Par. 445, and if there could in any case be doubt as to whether a stated article were within it, there can at all events be none as to these beads. An article, to be described by Par. 454, must imitate a precious stone or be accepted in trade as imitating one; it must be composed of paste or glass; it must be not exceeding one inch in dimensions, and it must be not set. That the strung beads in suit precisely fulfill each one of these requirements is so amply proven, so completely uncontradicted, and so fully demonstrated in our original brief, that we think it needless to do more than refer the court to what is there said. If the court have still, after noting the unchallenged evidence of several competent and disinterested witnesses, a doubt whether *beads* are one of the recognized forms of precious stones, we take the liberty of recalling attention to the two necklaces displayed upon the oral argument, one made of real pearls, and the other of real sapphires and diamonds, all in the form of beads. These were intended to give further concreteness to the proposition, as established by ample evidence, that beads are as much *precious stones*, when composed of pearls, rubies, cats-eyes, turquoise, etc., as are brilliants, cabochons, balls, button-stones, or any other common form of such stones. There is surely no escape from the conclusion that, since beads of really precious stone are *precious stones*, beads of imitations of these substances are *imitations of precious stones*.

What more can be necessary to make us conclude that when Congress declared imitations of precious stones to be dutiable at 10 *per cent*, it intended this

common and recognized form of such imitations to pay that duty?

There is an intimation in the question we are now discussing, as propounded by the court, of possible misapprehension on one point. The court in its query refers to articles imitating precious stones (*i. e.*, the beads here in controversy), but intended to be "used for the purposes for which beads are normally used." This leads us to point out, what is amply proven by the evidence, that these bead imitations of precious stones are *not* used for the purposes, and in the manner, for which other beads are normally used, but are a class by themselves, whose place and use are given them by their similitude to precious stones. They are known as "jewels." They are made and used "to imitate precious stones." They are to be *set*, either with wires or thread, as ornaments. While the record does not show, it is common knowledge, that beads not simulating precious stones are not set nor employed singly as ornaments, but are used in masses, in the making of jetted, beaded and "*passementerie*" trimmings, besides being largely used as adjuncts in the "*Kindergarten*," and for barter with savages. For some of these purposes very special classes of beads are made, as the bead imitations of jet, used solely in so-called "jet trimmings," those peculiar beads of bone, of wood, of metal etc. employed in making rosaries; the large, cubical beads of wood employed in the "abacus," etc. It is at once apparent, on reflection, that beads of other character could not be applied to the purposes of those imitating precious stones. Hence there would be no inconsistency in drawing a distinction, for duty purposes, between the strung glass bead which imitates a precious stone, and that one which does not, even were it not dictated by the inexorable force of the law's words as applied to the unchallenged facts in these cases. It seems to us hardly open to doubt, that if this same law had contained a

clause providing duty on "parts of rosaries," a string of the particular glass beads used for those articles would be dutiable thereunder, while excluded from Par. 445 because strung, and not as unenumerated manufactures of glass. The fact that they were beads would surely not militate against the acceptance of so literal a provision for them, merely because another part of the law contained a provision for glass beads, unstrung. And so, as to these bead imitations of precious stones, imported strung, we submit that as the circuit court of appeals held (not with any doubt, as implied by our opponent at page 9 of his supplemental brief), their right to be classified as imitations of precious stones is too clear to be obscured by a provision for all unstrung glass beads in another part of the law. To hold otherwise would be, it seems to us, to *create conflict by implication*,—a thing which we have no fear that the court will do.

On the side of the facts, the case was so fully argued last winter, and there was so little conflict in the evidence itself, that we deem it undesirable to re-argue it now, and shall content ourselves with noting a few errors in the supplemental Government brief. On page 5 it is asserted that Exhibits 2 and 3 are "not *en cabochon*." The Century Dictionary thus defines cabochon: "A polished but uncut precious stone. En cabochon, in the style of a cabochon, that is, rounded convex on top, and flat, concave, or convex on the back, without facets."

Examination of the exhibits will readily demonstrate whether or not they fulfill this definition. And Lamont, the only witness who used the term, says (Morrison R.. p 17) that they are *en cabochon*.

The singular views of the witness Schmalhausen are again cited on our opponent's p. 6, as often on his original brief. As every other witness in the case on the points involved contradicted his views flatly, it

would seem that one might as well cite, to control this court, the dissent of one of its members from a decision of the full bench.

A similar comment may be made concerning the quotation at p. 7, from Judge WHEELER's opinion in these cases. Judge WHEELER strangely confused the articles in the cases, which included no "variegated beads" except the catseyes, made to imitate an equally "variegated" *(chatoyant)* precious stone;—in which the imitation pearls, said by the learned judge to depend on "the wax" for their similitude, were shown by unchallenged evidence to contain *absolutely no wax*, while his assertion that the articles were "not capable of being set", was in contradiction of equally unchallenged evidence showing them to be employed by setting, every day in the year. These errors were carefully corrected in the appellate court; indeed their correction was one main purpose of the appeal,—and there can surely be no advantage in basing arguments, in this court, on the erroneous and discarded assertions of the circuit judge.

On p. 8 our opponent suggests that "beads" and "jewels" are interchangeable terms in trade, citing p. 7 of the Morrison record in proof. Examination of that page will show that this is a complete misapprehension. The evidence is that those two terms are interchangeable *as to these bead imitation precious stones*, but not at all as to any other beads;—a difference which we think is of vital importance.

On p. 18 a suggestion is made as to elaborate paste imitations of royal and family jewels. It may be allowable in connection, to remind the court of the shrewd query addressed to the Government counsel during oral argument; *as to whether he contended that the benefit of low duties was to be confined to imitations so fine as might deceive American purchasers.* Not only are the imitations of historic gems not subjects of trade and importation, but the contention that such alone are entitled to the low duty cannot stand, in view of the unquestionable right of the

plainest and cheapest loose glass bead to entry at the same rate. And the same circumstance is fatal to the further inference, sought, on p. 20, to be derived from the placing of a higher duty on real precious stones. The manifest reason for separately providing (in later acts; not in the one here involved,)—for pearls and for other precious stones, is that the conditions attached to the others,—"cut but not set," would be comically irrelevant to pearls, which are never "cut,"—*i. e*, cut to form and facetted. Moreover, the entire attempt involved in these arguments, to persuade the court by interpretation to narrow the effect or expand the limitations set up by the plain words of Par. 454, must fail because those cogent reasons which alone warrant such interpretation under the decisions, are absolutely lacking. That such is the *ultima ratio* of the argument, is clearly apparent when the learned counsel, on his pp. 23–24, is reduced to asserting as mere *ipse dixit* that these "are not *such* imitations of precious stones" as the law intends. This conclusion well illustrates the fallacy of seeking, in Par. 454, other characteristics than its plain words require. With all those requirements the stones in suit precisely comply. Once permit departure from the limits set up by the law, and it becomes merely a matter of individual opinion, *what sort* of imitation stones the law-makers intended.

With the appendix of the opposing brief we have little concern. It cannot be read without leaving the conviction that in the popular or received meaning of words, the lexicographers agree with our own preconception, and that the class of "precious stones" includes many more than the four rarest to which our opponent would limit it. It seems as clear that pearls, agates and moonstones are precious stones as that amber is not one.

And with these comments, we confidently leave the cases in the hands of the court.

ALBERT COMSTOCK,
of Counsel for Respondents.

Supreme Court of the United States.

Nos. 15 and 16.—October Term, 1900.

The United States, Petitioner, vs. E. A. Morrison & Son.	On writs of certiorari to the United States Circuit Court of Appeals for the Second Circuit.
The United States, Petitioner, vs. H. Wolff & Co.	

[December 17, 1900.]

Mr. Justice McKenna delivered the opinion of the Court.

These cases are concerned with the classification of certain articles imported by the respondents under the tariff act of 1890. Those imported by E. A. Morrison & Son were variously colored in imitation of "cat's eyes" or "tiger's eyes," and were strung. Others were colored in resemblance to the garnet, aqua marine, moonstone and topaz. Those imported by Wolff & Co. were in imitation of pearls, it is claimed, and were also strung. The contention is as to how they shall be classified or made dutiable—whether under paragraph 108 or under paragraph 454 of the act of 1890.

Paragraph 108 provides:

"Thin blown glass, blown with or without a mold, including glass chimneys and all other manufactures of glass, or of which glass shall be the component material of chief value, not specially provided for in this act, sixty per centum ad valorem."

Paragraph 454 provides:

"Precious stones of all kinds, cut but not set, ten per centum ad valorem; if set, and not specially provided for in this act, twenty-five per centum ad valorem. Imitations of precious stones composed of paste or glass not exceeding one inch in dimensions, not set, ten per centum ad valorem."

The board of appraisers decided that the merchandise was dutiable under paragraph 108, at sixty per cent. The decision was affirmed by the Circuit Court. (84 Fed. Rep. 444.) The Circuit Court was reversed by the Circuit Court of Appeals on the appeal of the respondents. (55 U. S. App. 406.) The cases are here on certiorari.

There was a dispute between counsel whether the articles represented by Exhibit 3 were involved in the pending appeal. That dispute seems to be settled by the concession of counsel for United States that they

are. At any rate, we do not consider the dispute important. We shall assume that all the articles are beads strung. The opinions of the Circuit Court and the Circuit Court of Appeals dealt with beads strung and their classification, and the same questions involved are here for consideration. At the taking of the testimony counsel for respondents made as to Exhibit 2 (so-called "cat's eyes") the following concession:

"The importer concedes that they were imported upon strings, and that the claim that they were entitled to entry as beads, loose, unthreaded, or unstrung, is not insisted on."

And in the Court of Appeals it was stipulated among things (the stipulation is a part of the record here) "that the merchandise herein involved was in fact beads, and was in fact threaded or strung at the time of its importation, and was thereby excluded from classification under paragraph 445, act of October 1, 1890, and that unless this court shall hold that it was dutiable under paragraph 454 of the said act, as imitations of precious stones, &c., it was properly classified by the collector of customs under paragraph 108 of the said act as manufactures of glass not specially provided for."

We have therefore only to consider whether the merchandise represented by all of the exhibits was or was not imitations of precious stones. In passing upon and determining these alternatives, we do not consider it necessary to detail the testimony of the witnesses. If we should regard it literally, and concede, that though conflicting, it preponderates in favor of the view that the articles imported were known in trade as imitations of precious stones, we do not consider that that alone should determine our judgment. If the testimony shows the articles to be imitations of precious stones, it also shows them to be beads, and it is stipulated that they were "in fact beads," and were "in fact threaded or strung" at the time of their importation. If they are entitled to a double designation, how are they to be classified? The answer would be easy and ready under prior tariff acts.

From an early day up to and including the act of 1883 beads had separate classification, and were dutiable at a higher rate than precious stones or imitations of them. Precious stones set and unset; imitations of them set or unset, and compositions of glass or paste when not set, were separately mentioned, and bore a different rate of duty from beads, and were not confounded with beads by resemblances, indeed not always by identity of material.

As early as 1858 the Treasury Department decided that genuine pearls, when imported strung on a thread to be used as beads for necklaces without further manufacture, were dutiable as beads. And later jet and coral necklaces were classed as beads and bead ornaments. Also glass balls and oval pieces of onyx, and pieces of glass or paste capable of being strung, were held to be beads against a claim of being imitations of precious stones.

A summary of the acts may be useful. In the act of 1832, under the description of "composition, wax or amber beads; all other beads, not otherwise enumerated," they were made dutiable at fifteen per cent. ad valorem. In the act of 1842 they were dutiable at twenty-five per cent. In that of 1846 the description was "beads of amber, composition or wax, and all other beads, thirty per cent. ad valorem." The description and duty were the same in the act of 1861. In the statutes enacted between 1861 and the Revised Statutes, beads or imitations of precious stones are not specifically mentioned. In the Revised Statutes beads specifically reappear, and were classified "all beads and bead ornaments except amber: fifty per cent. ad valorem." In the act of 1883 the classification was "beads and bead ornaments of all kinds except amber, fifty per cent. ad valorem."

The act of 1890, which is now under consideration, does not contain in all respects the specific classification of the prior acts. The only classification of beads by name is in paragraph 445, which provides "that glass beads, loose, unthreaded or unstrung," shall be dutiable at ten per cent. ad valorem. The opposite condition—beads not loose, not threaded or strung—is not specifically mentioned.

It cannot be said they cease to exist with the passage of the act of 1890 or were unprovided for by it. They necessarily must be classified some other way than by name; but do they thereby lose their distinction, and, while they are "in facts beads threaded and strung at the time of importation," do they cease to be that for lower duties by being made to resemble something else—to make the application to the pending case, to resemble some precious stone? That its purpose was to impose lower duties cannot be said of the act of 1890, nor can it be contended that such result was attained by any change of its provisions in regard to precious stones or their imitations.

In prior acts the rates on beads were higher than the rates on precious stones or imitations of them. Precious stones bore no higher rate than ten per cent. ad valorem. They, however, were not specifically mentioned in all acts. They were mentioned in the act of 1816, and were dutiable at seven and one-half per cent. They were mentioned in the act of 1842, and were dutiable at ten per cent. Imitations were dutiable at the same rate. The description was on "gems, pearls or precious stones seven per centum ad valorem; on imitations thereof, and compositions of glass or paste . . . set or not set, seven and a half per centum ad valorem." There was no specific enumeration in the act of 1861 of precious stones or imitations of them, nor of the latter in any act until the publication of the Revised Statutes, where they appear as follows: "Precious stones and jewelry—diamonds, cameos, mosaics, gems, pearls, rubies, and other precious stones, when not set, ten per centum ad valorem; when set in gold, silver,

or other metal, or on imitations thereof and all other jewelry—twenty-five per centum ad valorem."

In the act of 1883 precious stones not set bore a duty of ten per cent. Imitations of precious stones were not specifically mentioned. They came under the provision for compositions of glass or paste, not set, and were dutiable at ten per cent. If set (and precious stones if set), were classified as jewelry, and were subject to a duty of twenty-five per cent.

In the act of 1890 pearls are not grouped, as in some prior acts, with the diamond and ruby as precious stones. They have a separate classification, and are dutiable, if not set, at ten per cent. Precious stones are more carefully distinguished than under the act of 1883. The provision for them is as follows:

454. Precious stones of all kinds,

cut, but not set, ten per centum ad valorem;

if set, and not specially provided for in this act, twenty-five per centum ad valorem.

Imitations of precious stones composed of paste or glass, not exceeding one inch in dimensions, not set, ten per centum ad valorem.

If set, they seem to become jewelry under paragraph 452, and dutiable at fifty per centum ad valorem.

From this review it is evident that in prior tariff acts beads were classified separately from imitations of precious stones, and were regarded as distinct from them and dutiable at a much higher rate. Can it be said that the act of 1890 suddenly changed a purpose so constant throughout previous legislation, and not express the change but leave it to be inferred from indefinite and ambiguous provisions—provisions which had not had that effect nor were intended to have that effect? We think not.

If it be said they were only precluded from that effect by the specific provisions for beads and that such provisions are not in the act of 1890, the answer is twofold (1) that there is provision which applies to and embraces them. They are undoubtedly "glass and manufactures of glass," and the adequacy of that description, which is the description of paragraph 108, to include them cannot be denied. An imitation of a precious stone may be a manufacture of glass, but the latter is not necessarily an imitation of a precious stone, or, more narrowly, an imitation of a precious stone within the meaning of a tariff statute. Every resemblance would not make such imitation, and the suggestion of the counsel for the United States is not without its weight, that the capability and purpose of setting must be considered. The condition seems to have been contemplated by the statute, and in the testimony for the importers there was an attempt to satisfy it. Witnesses testified that while the articles were beads, they could be set and sometimes were set. Undoubtedly they could be fixed in metal, and so arranged as to conceal their perforations, but that was not their purpose or

use. Their purpose and use were for hat or dress trimmings, or to ornament embroideries. It may be that in construing a tariff act it is the essential nature of the article, not the purpose of the importer, which determines its classification; but if color may be regarded to bring the article to the resemblance of a precious stone its other conditions may be regarded to bring it to the character of a bead—a manufacture of glass, a mere hat or dress trimming, or an ornament for embroidery.

(2.) If the act of 1890 did not as specifically provide for beads as prior acts, glass beads as such were in the legislative mind and their various conditions contemplated. It was impossible to have in contemplation glass beads, loose, unthreaded and unstrung (445), and not have the exact opposite in contemplation—beads not loose, beads threaded and strung, and made provision for them. What provision? Were they to be dutiable at the same or at a higher rate than beads unthreaded or unstrung? If at the same rate—if *all* beads were to be dutiable at the same rate, why have qualified any of them? Were some to be dutiable at one rate and some at another rate? If made of plain glass, were they to be dutiable at sixty per centum under paragraph 108; if tinted or made to the color of some precious stone, were they to be dutiable at ten per centum under paragraph 454? No reason is assigned for such discrimination, and we are not disposed to infer it. It is a more reasonable inference that beads threaded of all kinds were intended to be dutiable at a higher rate than beads unthreaded, and if there can be a choice of provisions that intention must determine. Indeed, admitting that either provision (paragraph 108 or paragraph 454) equally applied, the statute prescribed the rule to be that "if two or more rates of duty shall be applicable to any imported article, it shall pay duty at the highest of such rates." (Section 5.)

The judgment of the Circuit Court of Appeals is reversed, and that of the Circuit Court is affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.